

ORIGINAL

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FILED
DISTRICT COURT OF GUAM

JAN 18 2006

MARY L.M. MORAN
CLERK OF COURT

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF GUAM**

10 UNITED STATES OF AMERICA,)
11)
12)
13)
14 KUANG-HUA CHEN,)
15 Defendant.)

CRIMINAL CASE NO. 04-00008

**UNITED STATES' SUPPLEMENTAL
MOTION FOR DISQUALIFICATION
OF DEFENSE COUNSEL**


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17 The Federal Rules of Criminal Procedure treat concurrent and prior representations
18 differently. Fed.R.Crim.P. 44(c) requires a trial court to inquire into the likelihood of conflict
19 whenever jointly charged defendants are represented by a single attorney, but not when counsel
20 previously represented another defendant in a substantially related matter. At a minimum the
21 defendant in the instant proceeding must be sufficiently informed of the consequences of waiver
22 for it to be knowing and intelligent. Belmontes v. Brown, 414 F.3d 1094, 1118 (9th Cir. 2005).

23 The former client may expressly waive his objection and consent to the adverse
24 representation. Written waivers were obtained in the following successive representation cases:
25 United States v. Shwayder, 312 F.3d 1109, 1113-14 (9th Cir. 2002)(former client signed waiver
26 but did not authorize law firm to disclose any information subject to his attorney-client
27 privilege); Lewis v. Mayle, 391 F.3d 989, 993 (9th Cir. 2004)(current client advised to seek
28 independent counsel to discuss ramifications of waiver).

1 See also, United States v. Morando, 628 F.2d 535 (9th Cir. 1980)(in absence of waiver of
2 attorney-client privilege, attorney's representation of defendant and witness required court to
3 accept attorney's motion to withdraw or take steps to insure there was no conflict), and
4 United States v. Vargas Martinez, 569 F.2d 1102, 1104 (9th Cir. 1978)(fact that prosecution
5 witness was client of defense counsel and that witness did not waive her attorney-client privilege
6 "presented the possibility of disclosure of confidential communications" and disqualification
7 order was correct.

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9 RESPECTFULLY submitted this 18th day of January 2006.

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13 Districts of Guam and NMI

14 By: 
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16 Assistant U.S. Attorney
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